Likelihood of Confusion Refusal Response

The examining attorney has refused registration on the Principal Register because the examining attorney believes the mark is confusingly similar to the mark appearing in U.S. Registration No. 4123654. In support of the refusal the examining attorney has submitted the following evidence: trademark registrations and excerpts from the Internet and indicated that, "t*he application is for the standard character mark BIG BUCK$ BUBBLE POP. The cited registration is for the standard character mark BUBBLE POPP. Incorporating the entirety of one mark within another does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d). See Wella Corp. v. Cal. Concept Corp., 558 F.2d 1019, 1022, 194 USPQ 419, 422 (C.C.P.A. 1977) (finding CALIFORNIA CONCEPT and surfer design and CONCEPT confusingly similar); Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc., 526 F.2d 556, 557, 188 USPQ 105, 106 (C.C.P.A. 1975) (finding BENGAL LANCER and design and BENGAL confusingly similar); In re Integrated Embedded, 120 USPQ2d 1504, 1513 (TTAB 2016) (finding BARR GROUP and BARR confusingly similar); In re Mr. Recipe, LLC, 118 USPQ2d 1084, 1090 (TTAB 2016) (finding JAWS DEVOUR YOUR HUNGER and JAWS confusingly similar); TMEP §1207.01(b)(iii). In the present case, the marks are identical in part.*" Applicant believes that the examining attorney has failed to make a *prima facie* showing of likelihood of confusion.

Applicant's mark and the cited reference do not have a similar appearance in that applicant’s mark is “BIG BUCK$ BUBBLE POP” whereas the cited referenced mark is “BUBBLE POPP”.

Applicant's mark and the cited reference do not have a similar sound in that applicant’s mark creates the phonetic sound “BIG BUCK$ BUBBLE POP” whereas the cited referenced mark creates the phonetic sound “BUBBLE POPP”.

In making its rejection as to confusing similarity, the examining attorney points to only a portion of the mark, specifically “BUBBLE POP”. However, applicant's mark is “BIG BUCK$ BUBBLE POP”, as such the mark must be reviewed for likelihood of confusion as a whole and should not be broken into component parts to reach a conclusion of confusing similarity. In re Hearst Corp., 25 U.S.P.Q.2d 1238, 1239 (Fed. Cir. 1992) (“marks tend to be perceived in their entireties, and all components thereof must be given appropriate weight.”); In re Hearst Corp., 25 U.S.P.Q.2d 1238, 1239 (Fed. Cir. 1992) (“When GIRL is given fair weight, along with VARGA, confusion with VARGAS becomes less likely.). The overall impression is different because the appearance of the marks differ, the first wording and most dominant portion of the marks differ and the sound is different. These differences significantly change the overall commercial impression of the marks, as such the purchasing consumer or user of said

goods/services will have different commercial impressions of the goods/services based on the associated marks, there is no confusion.

The wording “BUBBLE POP” and stylized variations thereof is considered weak wording in the present instance; and such widespread protection should not be granted, heretofore; because in the computer game and gaming industries the wording “BUBBLE POP” is widely used and therefore diluted, as can be seen as evidentiary fact from the plurality of web pages uploaded herein.

The dominant portion of applicant's mark is “BIG BUCK$”. In examining applicant's mark, it is inappropriate to point to the similarities between the referenced mark and the less prominent portion of applicant's mark. In re Home Builders Association of Greenville, 18 U.S.P.Q.2d 1313, 1317 (TTAB 1990).

Since the dominant portion of applicant's mark is “BIG BUCK$”, the first element to be articulated by the consumer, dissimilarity in the first element is more likely to have an impact on the overall commercial impression of the marks. Here, the first term in the referenced mark is “BUBBLE”. The differences in the first terms to be pronounced or heard lessens the likelihood of confusion. Roux Laboratories Inc. v. Kaler, 214 U.S.P.Q. 134 (TTAB 1982); SureFit Products Co v. Saltzon Drapery Co., 117 U.S.P.Q.2d 295 (CCPA 1958).

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As can be seen from the web pages uploaded herein, there is no likelihood of confusion, therefore, applicant hereby respectfully requests the examiner withdraw all objections listed in the office action pertaining to the Likelihood of Confusion and publish the mark for opposition.